

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEANETTE MARIE RUBIO,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

8:03CR388

MEMORANDUM AND ORDER

This matter is before the court on the defendant's "Motion to Withdraw her Motion to Vacate, Set Aside, or Correct Sentence by a Federal Prisoner Under 28 U.S.C. § 2255" and "Motion to Appoint Counsel." (Filing No. 46.) Defendant requests that this court withdraw her § 2255 motion and appoint counsel to represent her in any potential Rule 35 proceedings before this court.

On this record the court sees no basis for the defendant filing a motion under Rule 35. A motion under Rule 35 is made either to correct clear error within seven days after sentencing, or upon the government's motion made within one year of sentencing, to reduce a sentence for substantial assistance. Fed. R. Crim. P. 35(a)-(b). Here, more than seven days from sentencing have lapsed, and the government, not defendant, would move for any reduction in sentence.

The court will give defendant thirty days to determine whether she wishes to continue with her motion to withdraw her § 2255 motion. If defendant chooses to withdraw her § 2255 motion, she may permanently waive her right to file a successive § 2255 petition. If the defendant decides not to withdraw her § 2255 motion, it will be deemed ripe thirty days from the filing of this order.

IT IS ORDERED:

1. The defendant will have thirty days to notify the court as to whether she wishes to move forward with her "Motion to Withdraw her Motion to Vacate, Set Aside, or Correct Sentence by a Federal Prisoner Under 28 U.S.C. § 2255."
2. If defendant does not withdraw her § 2255 motion, the court will deem it ripe in 30 days.
3. Defendant's motion requesting the appointment of counsel is denied (Filing No. 46).
4. The Clerk is directed to mail a copy of this Memorandum and Order to the defendant at her last known address.

DATED this 2nd day of November, 2005.

BY THE COURT:

s/Joseph F. Bataillon

JOSEPH F. BATAILLON

UNITED STATES DISTRICT JUDGE